FARM CREDIT ADMINISTRATION
Washington, D. C.

SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

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COOPERATIVE RESEARCH AND SERVICE DIVISION

Summary No. 7 September 1940

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EXEMPTION FROM INCOME TAXES HELD ERRONEOUS
AND 15 YEARS' TAXES ASSESSED

The Commissioner of Internal Revenue determined deficiencies in income taxes of the Southern Maryland Agricultural Fair Association aggregating $22,769.40 for the years 1921 through 1935, and penalties of $5,692.36 for the same period, for its failure to file returns.

The Southern Maryland Agricultural Fair Association, as petitioner, contested the action of the Commissioner before the Board of Tax Appeals on the ground that the assessment and collection of income taxes for all years except two were barred by limitations, and on the additional ground that after 13 years a reversal by the Commissioner of the ruling of exemption by his predecessor "would be arbitrary, inequitable, without warrant of law, and unconstitutional."

The Board of Tax Appeals made findings of fact: That the Commissioner had ruled on January 18, 1924, that the petitioner was exempt from income tax under section 231(1) of the Revenue Act of 1921, as an agricultural or horticultural organization; that the petitioner, believing that the ruling relieved it from the duty of filing returns, did not file any returns for the years 1923 through 1935; that the ruling was erroneous; that the Commissioner, on March 6, 1937, reversed the 1924 ruling of his predecessor, and held that the petitioner was not and never had been exempt as an agricultural or horticultural organization, under section 101(1) of the Revenue Acts of 1934 and 1936, corresponding provisions of earlier acts, article 101(1)-1 of Regulations 86, or corresponding provisions of earlier regulations, since at all times the income of the petitioner had inured to the benefit of its stockholders; and that the petitioner was notified of the new ruling on April 23, 1937.

The Board found that the Commissioner, in the notice of deficiency, had explained his retroactive application of the new ruling in part as follows:

> " . . . The officers of your corporation since 1921 have been making distributions to stockholders contrary to the basis on which the exemption was predicated, and must reasonably have known that the ruling of January 18, 1924 was not based upon a full knowledge of the facts."

Since the petitioner did not file any returns between March 6, 1937, and the date of the proceedings before the Board of Tax Appeals, the Board held that the penalties, aggregating $5,692.36, must stand if any of the deficiencies might be properly assessed.

In answer to the arguments of the petitioner that, first, it was excused by the 1924 ruling from filing returns, and that, second, the assessment and collection of the income taxes were prevented by limitations, the Board said:

> "Although a corporation exempt from taxation under the statute is not required to file any return, the petitioner was not exempt and, therefore, was required by the statute to file a return. Section 250 (d) of the Revenue Act of 1921 provided that 'taxes due under any return made under this Act for the taxable year 1921 or succeeding taxable years shall be determined and assessed by the Commissioner within four years after the return was filed' and provided further that there should be no time limit in the case 'of a failure to file a required return.' The provisions of later acts are, for present purposes, substantially similar. The statutory period of limitations upon determination, assessment, and collection of a deficiency is initiated under these provisions by the filing of a return. . . . The petitioner concedes that it is not within the letter of the statutes, since it filed no returns. The point which it attempts to make is that it was excused from filing returns by the ruling of the Commissioner that it was exempt and the statutes should be read as if they provided a period of limitation beginning when the return for the particular year was 'filed or excused.' It cites no case in point.
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> "The petitioner relies upon the regulations of the Commissioner as authority for adding the words 'or excused' to the statute. The regulations have provided, at all times material hereto, that a corporation claiming exemption shall first make certain proof to the Commissioner 'to establish its exemption, and thus be relieved of the duty of filing returns of income and paying the tax' and 'when an organization has established its right to exemption, it need not thereafter make a return of income or any further showing' so long as it does not change its character. See, for example, article 511, Regulations 45 and 62, and article 521, Regulations 74. The Commissioner issued some kind of a ruling on January 18, 1924, holding that the petitioner was exempt from tax, apparently as an agricultural organization. The argument of the petitioner is that it had 'established its right to exemption' on January 18, 1924, and 'it need not thereafter make a return of income,' since it never changed its character thereafter.
>
> "This brings up the question of whether the regulations were ever meant to add the words 'or excused' or whether they could add anything to the words of the statute. The Commissioner by his regulations can not change the law. [Citing cases] . . . .

He could not thus change the law if he so desired. He can decide what documents he will accept as returns but, in the absence of returns, he has no authority to permit the statute of limitations to start running against him by some means not provided by statute. The petitioner was not exempt under the statute or the regulations and was required to file returns and pay taxes. The Commissioner made an erroneous ruling that it was exempt and for a number of years did not demand returns or tax. The record does not show how the error was made or who was at fault. However, the erroneous ruling did not relieve the petitioner from filing the returns and paying the taxes as the statute provided, and it did not start the running of any statutory period of limitation. . . . . .

"Although this petitioner was encouraged by the action of the Commissioner to believe that it would not have to file returns for 1923 and subsequent years, nevertheless, it was never prevented from filing returns. It could have filed returns and might thereby have started the period of limitations, though still claiming exemption. Some taxpayers take such precautionary steps. There is no inequity in requiring this petitioner to pay the taxes actually imposed upon it by the revenue acts. It could have avoided the inequity of the penalties by filing returns promptly after it learned of the correctness of the ruling in 1937, but it chose not to file any returns for the years here involved, apparently hoping thereby to avoid both tax and penalty. Having made the choice, it must abide by it and take the consequences.

"The conclusion here reached that the statute never started to run is consistent with prior decisions that a return is required to start the period of limitations. . . . . ."

Citing cases, the Board of Tax Appeals disposed of the contention that the Commissioner did not have power to reverse the earlier 1924 ruling, as follows:

"When the Commissioner determined in 1937 that the petitioner was not exempt and never had been, it was his duty to determine, assess and collect the tax due for all years not barred by the statutes of limitation. The conclusion reached and announced by his predecessor in 1924 was not binding upon him. It did not exempt the petitioner from tax [underscoring added]. This same point was decided in this way in Stanford University Bookstore, 29 B.T.A. 1280; affd., 83 Fed. (2d) 710. See also Arthur H. Lamborn, 13 B.T.A. 177, 186; affd., 43 Fed. (2d) 814; Frances P. McIlhenny et al., Executors, 13 B.T.A. 283; affd., 39 Fed. (2d) 356; Sweets Co. of America, Inc., 12 B.T.A. 1285;

affd., 40 Fed. (2d) 436; James Couzens, 11 B.T.A. 1040; Old Farmers Oil Co., 12 B.T.A. 203; Estate of W. S. Tyler, 9 B.T.A. 255; Yokohama Ki-Ito Kwaisha, Ltd., 5 B.T.A. 1248. . . . . ."

The Southern Maryland Agricultural Fair Association was therefore not granted relief from the payment of income taxes and penalties for 15 years past, aggregating in excess of $28,000, even though it had relied upon the earlier ruling and had believed that the earlier ruling relieved it from the duty of filing returns and making payments of income taxes.

Southern Maryland Agricultural Fair Association, Petitioner, v. Commissioner of Internal Revenue, Respondent, 40 B.T.A. 548; promulgated September 12, 1939.

BUREAU OF MOTOR CARRIERS DEFINES "COOPERATIVE ASSOCIATION"

The Motor Carrier Act, 1935, as amended, 49 U.S.C., section 301 et seq., administered by the Bureau of Motor Carriers, Interstate Commerce Commission, provides in subsection (b) of section 203, 49 U.S.C., section 303(b), that certain vehicles are excepted from the operation of the act. Subsection (b) of said section 203 states, in part:

> "(b) Nothing in this part [Motor Carrier Act, 1935], except the provisions of section 204 [49 U.S.C., section 304] relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . . . (4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (4b) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended; . . . . . ."

With respect to the foregoing clause (4b) of subsection (b) of section 203 (49 U.S.C., section 303(b)(4b)), the Bureau of Motor Carriers has issued Ruling No. 91 which is as hereinafter set forth.

Interstate Commerce Commission
Bureau of Motor Carriers

Ruling No. 91
203(b)(4b) - 3
July 17, 1940

The following is an administrative ruling of the Bureau of Motor Carriers, made in response to questions propounded by the public,

indicating what is deemed by the Bureau to be the correct application and interpretation of the Act. Rulings of this kind are tentative and provisional and are made in the absence of an authoritative decision upon the subject by the Commission.

Question:

What type of cooperative association is referred to in section 203(b)(4b) of the Motor Carrier Act, 1935, the motor vehicles of which are exempt under that section from the general provisions of the Act?

Answer:

The following conditions must exist in order that vehicles of cooperative associations as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, may be exempt as specified in the Motor Carrier Act:

(1) The vehicles must be controlled and operated by the cooperative association. That is to say, the association, as distinguished from its members, or from any subordinate corporation or other entity, must own or have the legal right of possession of the vehicle and direction and control of its operations and the person who operates it must be one who is an employee of the association.

(2) The association must be one in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, or any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services.

(3) The association must be one which neither deals (as described in (2)) in the products of, or supplies for, nor furnishes farm business services to, nonmembers to any amount greater in value than such as are handled by it for members.

(4) The association must either provide that no member may have more than one vote in the affairs of the association, or limit its dividends on stock or membership capital to 8% a year, but it may impose both restrictions.

(5) The association must limit its powers and authority, and, if incorporated, its articles of incorporation and by-laws, to the letter of the Agricultural Marketing Act. Its activities and powers must not in any case be so extended as to result in a business concern conducted for profit as distinguished from

a cooperative enterprise for the mutual benefit of the farmer members thereof as producers or purchasers. The association must not only conduct its business within the limitations of the statute but must be so organized as to be restricted to its terms. The business must be primarily that of farmers acting together in marketing farm products and/or furnishing farm supplies and farm business service.

The character of the organization of the cooperative association, its powers, functions, volume of business and other relevant factors must be in complete accord with the foregoing conditions before exemption of the motor vehicles operated by such association can be said to exist.

A federation of cooperative associations is to be regarded as itself a cooperative association within the meaning of section 203(b)(4b), provided each of the associations which compose the federation meets the conditions set out above.

This ruling supersedes Administrative Ruling No. 61, issued August 3, 1937, and Administrative Ruling No. 71, issued February 7, 1938.

W. Y. Blanning
Director

COURT HOLDS MARKETING AGREEMENT SUBJECT TO UNIFORM SALES ACT

An action was brought by the Pacific Wool Growers, a cooperative marketing association, against Draper & Co., Inc., a Boston wool dealer, and its agent, John J. Kelly, to recover compensatory and punitive damages for the alleged wrongful conversion of wool. The wool, which was alleged to belong to the association pursuant to the marketing agreements entered into by the association with each of its grower members, had been "purchased" by Draper & Co. in May 1935, from seven of the members of the association. Although the complaint set forth four causes of action, this summary will be concerned only with the first.

The first cause of action involved the wool produced by one Fred Phillips who had executed the marketing agreement with the association in 1933. While the wool, which was of the 1935 clip, was still in Phillips' possession, Draper & Co. "purchased" it from him at market value. Subsequently the wool was shipped to Boston. Demand made by the association upon Draper & Co. for a return of the wool was refused.

The trial court dismissed the complaint, and the association appealed. With respect to the pleadings of the parties, the Supreme Court of Oregon said:

> "The theory of the plaintiff is that, under and by virtue of the marketing agreements executed by the grower members, absolute title to the wool in question was vested in it prior to and at the time Draper & Co. purchased it and that the intent or good faith of the purchaser is immaterial except in so far as punitive damages are concerned. Plaintiff further contends that Draper & Co. knew of the contractual relations of the grower members with the co-operative association at the time the wool was purchased and that, therefore, its interference was tortious and malicious. It is conceded that the marketing agreements were not recorded and that the wool in controversy never came into possession of the plaintiff association.
>
> "Defendants contend: (1) That at the time the wool was purchased by Draper & Co., the co-operative association had not acquired title to the same under and by virtue of the marketing agreements, or otherwise; (2) that the wool which defendants purchased was not in existence or produced by sheep owned by the grower members at the time the marketing agreements were executed; (3) that the wool was purchased in good faith and for value without actual or constructive knowledge of any right or interest of the association in the same; . . . . . ."

One of the questions before the court was whether the association and its members could by contract accomplish a sale of wool which, at the time the contract was executed, had not more than a mere potential existence. The court said:

> "Plaintiff's claim of ownership is based upon the co-operative marketing contracts. There are many difficult and perplexing problems involved in this case -- especially as to whether an absolute title to wool having a potential existence passed to the association when it actually came into existence, but, in view of the conclusions reached, it will not be necessary to consider the same. It will be assumed, without so deciding, that such title did pass as between the association and its grower members. It does not follow, however, that the passing of title as between the parties to the co-operative agreement is conclusive as against subsequent bona fide purchasers. Neither does such passage of title preclude the defense of equitable estoppel."

In discussing the relative rights and equities of the parties, the court continued:

> "It is apparent that the association and Draper & Co. each claims to have deraigned title from the same common source. Plaintiff relies upon the co-operative marketing agreements. Draper & Co. relies upon its rights as a bona fide purchaser for value and without notice of the alleged previous sale and also upon the principle of estoppel.
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> ". . . . . In the instant case, there is ample evidence that Draper & Co. had no notice or knowledge of any interest the association may have had in the Phillips wool. Phillips told Kelly, the buyer for Draper & Co., that his wool was not 'tied up' with the association and that, although he was a director of the association, he was free to sell. Kelly, in response to the question, 'Did you make any inquiry of him (Phillips) as to whether or not he still had a contract with the Pacific?' testified, 'He told me that he had withdrawn from the Pacific; and that he wanted to sell his wool and realize some cash.'
>
> "We think section 64-409, Oregon Code 1930 -- which is section 25 of the Uniform Sales Act -- applies and is decisive relative to the question of title. It provides as follows: 'Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.' . . . . . .
>
> "Phillips owned the sheep and had all the indicia of ownership of the wool. There was nothing of record to indicate any interest of the plaintiff association in the wool. Can it be that, under such circumstances, a bona fide purchaser deals at his peril? The rule seems to be well settled that where the same thing is sold to two different persons by contracts equally valid, the bona fide purchaser who first acquires possession of the property is entitled to the same. 24 R.C.L. 49; 55 C.J. 643; Patchin v. Rowell, 86 Conn. 372, 85 A. 511. Some courts seem to place a limitation on the rule by permitting the first buyer a reasonable time to obtain possession of the property, but it is believed that such limitation is contrary to the purpose and spirit of the sales act. While the co-operative marketing act of this state (Code 1930, § 25-801 et seq., as amended)

was enacted subsequent to the sales act, certainly the legislature did not intend to repeal the prior act concerning the rights of bona fide purchasers."

Thus, without determining that the title to the wool had passed or had failed to pass under the marketing agreement, the court held that the transaction was within section 25 of the Uniform Sales Act. The judgment of the trial court dismissing the complaint therefore was affirmed.

Pacific Wool Growers v. Draper & Co., Inc., et al., 158 Ore. 1, 73 P. (2d) 1391.

ELECTRIC COOPERATIVE HELD NOT LIABLE IN TORT

A cooperative association organized as a nonprofit corporation under the Arkansas Electric Cooperative Corporation Act (Act 342, Ark. Acts of 1937), which was financed by the Rural Electrification Administration, was held to be immune from liability for a tort of one of its employees.

Elkins, a farmer who was giving the association a right-of-way for setting poles across his farm, was invited by Wilson, an employee of the cooperative, to accompany him in an automobile (driven by Wilson) for the purpose of fixing the location on Elkins' farm of certain poles. Elkins, claiming that he was injured as a consequence of Wilson's negligence in driving the automobile into a stump, brought suit against the association and Wilson.

The Electric Cooperative Corporation Act of Arkansas gave the association the power "to sue and be sued, complain and defend, in its corporate name." The statute also provided, however, that the association should be operated and supported by means of revenues derived from its members for electric energy consumed; and stated that members should be entitled to receive any surplus when the revenues were not required to pay certain enumerated expenses and the association's indebtedness, or to furnish reserves for "improvement, new construction, depreciation and contingencies as the board may from time to time prescribe."

The court said in part:

> "It is first earnestly insisted that appellant corporation, being a non-profit sharing organization and created solely for the benefit of its members, and not for profit, cannot be held liable in damages for injuries resulting from a tort of its employee, Roy Wilson. After a careful review of the record, we have reached the conclusion that this contention must be sustained.

"We take judicial notice of the act of Congress of May 20, 1936, creating 'an agency of the United States to be known as the "Rural Electrification Administration".' Title 7 United States Code Annotated, § 901 et seq.

"Under this act, great sums of money were set aside with which to make loans to local co-operative agencies throughout the nation to enable rural residents to secure the conveniences afforded by electric service, a privilege that had theretofore been denied to them on account of the prohibitive cost.

"This act also provided for the creation of local co-operative agencies to be organized under the laws of any state which could be non-profit sharing.

"For the purpose of carrying out this worthy enterprise, and to enable rural residents to comply with and take advantage of the provisions of the federal act and to secure the loan of funds from the federal agency, the legislation, supra, was enacted in Arkansas in 1937.

"Appellant corporation in the instant case was created, as indicated, under the special provisions applying to non-profit sharing corporations for the benefit of its members only. No provision is made for the creation of a fund out of which to respond for the tort of one of its members or employees, and unless there is statutory liability, in tort actions, appellant corporation cannot be held liable. True it may be sued to enforce contracts into which it might enter, but it cannot be made to respond in tort in the absence of statutory provision therefor.

• • •

"We think the funds created by non-profit sharing corporations, such as in the instant case, are in the nature of trust funds.

• • •

"We have applied this same principle of law to charitable corporations which were non-profit sharing."

The court also held that Elkins was not a guest within the meaning of the Arkansas Motor Vehicle Guest Act, since the trip was not for his sole benefit but was rather for the mutual benefit of the parties.

Pointing out that no similar immunity from tort liability inured to Wilson, the employee of the electric cooperative association, the court held that he was liable for injuries resulting from his negligence even though the common purpose of the parties was to fix the

location of the poles which were to be set up on the farm by the cooperative association.

Arkansas Valley Cooperative Rural Electric Company et al. v. Elkins, ____Ark. ____, 141 S.W.2d 538, decided June 10, 1940.

The Supreme Court of the United States has held, however, in the case of Keifer et al. v. Reconstruction Finance Corporation and Regional Agricultural Credit Corporation, 306 U.S. 381, that the Regional Agricultural Credit Corporation of Sioux City, Iowa, a "government" corporation, was amenable to suit for an alleged tort although there was no provision in its charter which would make it liable to any type of suit. The Court concluded that the suability of the Reconstruction Finance Corporation -- which had been empowered by Congress to charter the Regional -- would "radiate through Reconstruction to Regional." The conclusion that an action would lie was reached even though the stock of the Regional Agricultural Credit Corporation was owned entirely by the Federal Government and its operations were supervised by any agency of the Government. The court in an opinion by Mr. Justice Frankfurter stated, among other things: "We should be denying the recent trend of Congressional policy to relieve Regional from liability."

FEDERAL TRADE COMMISSION ISSUES ORDER AGAINST ATLANTIC COMMISSION COMPANY

On July 30, 1940, the Federal Trade Commission issued a press release reading as follows:

> "The Atlantic Commission Company, a wholly owned subsidiary of The Great Atlantic & Pacific Tea Company of America, 102 Warren St., New York, has been ordered by the Federal Trade Commission to discontinue accepting brokerage allowances and discounts in lieu of brokerage upon purchases made for its own account, in violation of the Robinson-Patman Act.
>
> "Commission findings, based on a stipulation entered into between the Atlantic Commission Company and the Federal Trade Commission, are that the Atlantic Commission Company is engaged in the business of buying, selling and distributing fresh fruits and vegetables on and for its own account and that of The Great Atlantic & Pacific Tea Company (and its subsidiaries) and also as a broker and on consignment as a commission merchant for the accounts of other buyers and sellers of such products.
>
> "Further findings are that the Atlantic Commission Company has purchased fresh fruits and vegetables at a net price reflecting a reduction from the prices at which sellers were currently selling commodities to other buyers, of an amount reflecting in whole

or in part, the amount of brokerage which was being paid by such sellers to brokers representing them in effecting sales of their commodities to buyers other than the Atlantic Commission Company.

"Other findings are that with many who did not sell to the Atlantic Commission Company at a net price or on a net basis, the Atlantic Commission Company, in connection with purchases for its account, negotiated 'quantity discount agreements,' which provided for the payment to the Atlantic Commission Company of an amount to be computed on the basis of the rate at which the contracting seller was currently paying brokerage to his brokers representing him in effecting sales of commodities to buyers other than the Atlantic Commission Company.

"Under the order, the Atlantic Commission Company is to cease making purchases of commodities for its own account at a so-called net price or on a so-called net basis, and at any other price and on any other basis which reflects a deduction from the prices at which sellers are selling commodities to other purchasers, of any amount representing, in whole or in part, brokerage being paid by sellers to their brokers on sales of their commodities.

"The order further prohibits the Atlantic Commission Company from accepting from sellers on purchases of commodities made for its own account any so-called quantity discounts and payments of all kinds reflecting in whole or in part, brokerage being paid by sellers to their brokers on sales of their commodities.

"It was further ordered that the Atlantic Commission Company cease accepting from sellers directly or indirectly on purchases of commodities made for its own account, any brokerage and any allowances and discounts in lieu of brokerage in any manner whatsoever."

ASSOCIATION FAILS TO RECOVER STATUTORY PENALTY

The Dairymen's League Co-Operative Association, which was organized under the Cooperative Corporations Law of the State of New York, was engaged in handling milk and milk products of upwards of 30,000 producers of milk in New York State under marketing contracts entered into by the association with the producers. The Brockway Company was the owner of the Watertown (New York) Daily Times. The association, alleging that statements appearing in an article published in that newspaper constituted a violation of section 20 of the New York

Co-operative Corporations Law, brought suit against the Brockway Company for the recovery of a $500 statutory penalty.

It was alleged that an unincorporated association, known as Dairy Farmers Union, incited a so-called "milk strike" by advocating that the members of the plaintiff association and others withhold deliveries of milk to the plaintiff and other handlers.

On October 28, 1937, the Watertown Daily Times published an article recounting the progress of the strike in the area expected to be affected. The article included reports and interviews from persons and organizations affected. According to the court,

> "Some of these were favorable to withholding of milk by the producers, while others were opposed, including the plaintiff's president, who was quoted in a formal statement of 49 lines. The particular words which the plaintiff claims were false and published maliciously and knowingly, but not a part of its president's formal statement, are the following: 'Before noon, it was reported through Union officials that the Dairymen's League and Borden -- two major milk trust concerns -- were making overtures toward settlement of the few-hour-old strike. Both concerns, according to a report, are willing to extend Union recognition and pay farmers on a 3% basis!'"

The plaintiff association alleged that the foregoing quotation from the Watertown Daily Times was in contravention of section 20 of the New York Co-operative Corporations Law, which reads as follows:

> "Any person who maliciously and knowingly spreads false reports about the finances or management or activity of any co-operative corporation incorporated under or subject to this chapter or organized under a similar statute of another state, and operating in this state under due authority, shall be guilty of a misdemeanor and be subject to a fine of not less than one hundred dollars and not more than one thousand dollars for each such offense; and shall be liable to the corporation aggrieved in a civil suit in the penal sum of five hundred dollars for each such offense." [underscoring added]

The association complained that the statements ". . . the Dairymen's League . . . [was] making overtures toward settlement" and was "willing to extend Union recognition," were false. The cause of action was also founded in part on the reference to the plaintiff as one of the "major milk trust concerns."

The court, unable to find that section 20 of the New York Co-operative Corporations Law had ever been previously construed by judicial

decision, said:

> "Violation of Section 20 has been made a crime, and this carries the intendment that the 'report' and 'activity' designated must be evil or harmful, for otherwise, no one would be 'aggrieved'; that also being essential. Surely, the Legislature did not contemplate punishment or penalty for reports of a creditable nature, since they would be beneficial or at least innocuous. An act inherently good may be ill-timed, but it is not criminal, and it would be ridiculous to call it malicious. The article containing the statements upon which the plaintiff's complaint is based must be construed as a whole, and in the light of the circumstances surrounding its publication. . . . It was the legitimate business of the defendants to gather and to publish all of the news pertaining to the serious and widespread disturbance then taking place in the dairy industry. That was the most important news of the day to a great number of the readers of the Watertown Daily Times, and their vital interest entitled them to prompt and complete information of daily developments. It was matter of common knowledge that violence threatened and drastic action impended. Publication of a statement purporting to come from officials of the union to the effect that officials of the League were making overtures, was beneficial to all parties in that it was calculated to deter or postpone further overt acts upon the part of the so-called strikers. It imputed to the officials of the League a willingness to give consideration to the merits of the controversy which so directly affected milk producers and the welfare of its own membership, and an overture, a prelude, to negotiations.
>
> "The dairy industry is the lifeblood of the farmers of the North Country and intimately related to the well-being of the other inhabitants of that section. With this in mind, it is inconceivable that a report to the effect that plaintiff's officials were willing to negotiate toward the settlement of a controversy certain to lead to great financial loss and possible bloodshed should give plaintiff just cause for complaint. On the contrary, such an attitude would indicate concern for its membership and a commendatory desire to avoid hardship and suffering certain to result from prolongation of a strike."

Concerning the objection of the Dairymen's League Co-Operative Association, Inc. to the reference to it as one of the "major milk trust concerns," the court cited a dictionary definition that a "trust" is "a combination of interests for the purpose of regulating and controlling by means of a common authority the use, supply, or disposal

of some kind of property . . ." In this connection the court said:

> "That this appellation did not happen to be to the plaintiff's liking does not warrant a conclusion that it was thereby 'aggrieved' in the sense that it was given cause for just complaint, and so within the meaning of Section 20 entitled to recover a penalty without proof of damage. . . . It, subject as it is to the Co-operative Corporations Law, is specifically exempted from the effect of anti trust laws. Section 128, Barns v. Dairymen's League Co-Op. Ass'n, 220 App. Div. 624, 222 N.Y.S. 294, and under federal statutes, it has been said that 'A co-operative enterprise, otherwise free from objection, which carries with it no monopolistic menace, is not to be condemned as an undue restraint . . .' Appalachian Coals v. United States, 288 U.S. 344, 374, 53 S. Ct. 471, 479, 77 L. Ed. 825. Classification as a 'trust' does not imply infamy, for all trusts are not illegal. Neither was the employment of the term as an incidental allusion in the Times a 'report' of which the plaintiff may complain."

A motion by the defendant to dismiss the complaint was granted. The court concluded:

> "Careful analysis of the few lines containing the objectionable announcement of a conciliatory attitude upon the part of League officials, including the incidental reference to it as a member of the 'milk trust,' leads to the conclusion that they did not under all of the surrounding circumstances constitute 'false reports about the finances or management or activity' of the plaintiff by which it was 'aggrieved' within the meaning of Section 20, and consequently the words are not actionable."

Dairymen's League Co-Operative Ass'n, Inc., v. Brockway Co. et al., 18 N.Y.S.2d 551, decided February 7, 1940.